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10 BRIAN JOHNSON

11 UNITED STATES DISTRICT COURT  
12 DISTRICT OF NEVADA

13 **UNITED STATES OF AMERICA,**  
14 Plaintiff,

Case No. 2:10-CR-00216-APG-VCF

15 vs.

16 **BRIAN JOHNSON,**  
17 Defendant.

DEFENDANT'S MOTION FOR  
TEMPORARY RELEASE FROM  
CUSTODY BASED UPON MEDICAL  
NECESSITY

(Expedited Hearing Requested)

18 Certification: In accordance with Local Rule 12-1(c), Defendant, by and through  
19 undersigned counsel, certifies that this stipulation is timely filed.

20 Pursuant to the Eighth Amendment of the United States Constitution,  
21 Defendant respectfully requests that the Court temporarily release him from custody  
22 based upon medical necessity. Defendant, Brian Johnson, has experienced significant  
23 pain while in custody of the Southern Nevada Detention Center ("SNDC").  
24

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26  
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28  
///

1 It appears Mr. Johnson has gallstones and needs corrective surgery. Counsel is  
 2 currently obtaining a HIPPA form from Mr. Johnson to get the records from SNDC. It  
 3 does not appear SNDC will do the surgery. Accordingly, based upon Constitutional,  
 4 humanitarian and medical grounds, he respectfully requests that the Court  
 5 temporarily release him for a designated period of time following an evidentiary  
 6 hearing on the matter.  
 7

8  
 9 Counsel has contacted SNDC to verify the information from the Mr. Johnson but  
 10 has not received a response as of the time of this Motion.

11 **DATED** this 22<sup>nd</sup> day of March, 2017.

12  
 13 /S/ Dustin R. Marcello, Esq.  
 14 **DUSTIN R. MARCELLO, ESQ.**  
 15 Nevada Bar No. 010134

16 **MEMORANDUM POINTS AND AUTHORITIES**

17 In support of this motion, Mr. Johnson relies upon the memorandum of points  
 18 and authorities set forth below and Exhibit A appended hereto.

19 **I.**

20  
 21 **Brian Johnson Requires Surgery And Recuperation Time**

22 During the last several months, Mr. Johnson has experienced excruciating pain.  
 23 He was examined by medical personnel at SNDC who, according to Mr. Johnson's  
 24 understanding have made a recommendation to the Marshall's Office to transport for  
 25 outside medical service. At this time, the Marshall's position on the request is  
 26 unknown. Mr. Johnson indicates he is in significant pain and directed Counsel to file  
 27 this request rather than wait for verification of the position of the Parties. Counsel will  
 28 take appropriate steps to resolve the matter without hearing if possible.

Brief internet research indicates gall bladder surgery to be a relatively  
 significant surgery requiring a period of recuperation. Accordingly, a period of

temporary release from custody is appropriate in order to address Mr. Johnson's medical needs.

### III.

#### An Evidentiary Hearing Is Necessary

The Court should convene an evidentiary hearing in order to permit Mr. Johnson to submit additional evidence and potential medical testimony to assist the Court in evaluating his request. He continues to experience excruciating pain which will hopefully be relieved through medical procedure. The procedure, however, brings it's own set of complications. How much time Mr. Johnson will need for recovery post-surgery can be best addressed at an evidentiary hearing on the matter.

**DATED** this 22<sup>nd</sup> day of March, 2017.

/S/ Dustin R. Marcello -  
**DUSTIN R. MARCELLO, ESQ.**  
Nevada Bar No. 001332

#### CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the PITARO & FUMO, CHTD., and that on the 10<sup>th</sup> day of March, I served a copy of the foregoing: TEMPORARY RELEASE FROM CUSTODY BASED UPON MEDICAL NECESSITY (Expedited Hearing Requested) via the CM/ECF system upon the following.

**Government Counsel:**

Susan Cushman

/s/ Kristine Tacata  
Kristine Tacata, an employee of the Pitaro & Fumo,  
Chtd.